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No. 883

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

THE VANSTON BONDHOLDERS PROTECTIVE COMMITTEE FOR HOLDERS OF FIRST MORTGAGE BONDS OF KENTUCKY FUEL GAS CORPORATION,

Petitioners,

vs.

THE COLUMBIA GAS SYSTEM, INC., BEN WILLIAMSON, JR., as Trustee of INLAND GAS CORPORATION and of KENTUCKY FUEL GAS CORPORATION, *et al.*,

Respondents.

BRIEF OF THE COLUMBIA GAS SYSTEM, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ON PETITION FOR WRIT OF CERTIORARI

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April 28, 1960

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DEFINITIONS AND REFERENCES

American, Inland and Kentucky: Respectively, American Fuel & Power Company, Inland Gas Corporation and Kentucky Fuel Gas Corporation, the debtors in the three proceedings under Chapter X of the Bankruptcy Act in the District Court for the Eastern District of Kentucky.

Kern proposals: the "Alterations and Modification of Plan of Reorganization Dated February 25, 1958, as Amended" proposed in the District Court on May 15, 1959 by Petitioners in No. 809.

post-bankruptcy interest: Interest after the institution of a receivership, bankruptcy or reorganization proceeding.

Trustees' Plan: The plan of reorganization for the Debtors filed in the District Court by their Trustees on February 25, 1958, which the District Court confirmed on June 2, 1958, and on June 1, 1959 ordered consummated.

The appendix to the Petition is cited as "Vanston App.".

Citations to the opinions below are to the reproduction thereof contained in the appendix to the Petition.

Emphasis has been supplied to quotations in which emphasis appears.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

The Court of Appeals in 1957 determined that the equitable claims of creditors of the Debtor *Kentucky* against the assets of the affiliated Debtor *Inland* do not include post-bankruptcy interest, and reaffirmed that decision in 1959 on appeals from an order confirming a Trustees' Plan expressly based thereon. Did the Court of Appeals err in 1960 by adhering to these decisions and affirming an order of the District Court which (i) rejected reorganization proposals which would have provided for post-bankruptcy interest to creditors of Kentucky from Inland assets and (ii) directed consummation of the Trustees' Plan?

Did the District Court abuse its discretion by refusing to begin new proceedings with respect to reorganization proposals which, although purporting to be an "alteration" of the confirmed Trustees' Plan, provided for a reorganization based on different principles of creditors' rights and a new valuation, to be financed by changed methods and to be carried out by different procedures?

COUNTERSTATEMENT OF THE CASE

This petition for certiorari (filed April 25, 1960) seeks review of the same decision of the Court of Appeals that is the subject of the petition for certiorari in No. 809* (which was filed March 24 and all responses to which were filed by April 22). The petition does not refer to the petition for certiorari in No. 809, and its silences on this and related matters leave a distorted and confused picture of who petitioners are, what their role in these proceedings has been,

Paul E. Kern et al., Petitioners v. *The Columbia Gas System, Inc. et al., Respondents*, referred to herein as the Kern Petition. The instant petition (No. 883) and the Committee filing it are referred to herein as the Vanston Petition and the Vanston Petitioners, respectively.

and how their petition for certiorari comes to be filed at the time it was filed. To these matters we speak briefly.

1. The Vanston Petitioners are a committee representing holders of Kentucky Fuel Gas Corporation First Mortgage Bonds, which has been active in these proceedings for many years. Like Petitioner Kern in No. 809, they unsuccessfully applied to this Court for a writ of certiorari in 1957 to review the first decision of the Court of Appeals that holders of Kentucky Bonds are not entitled to post-bankruptcy interest from the assets of the affiliated Debtor Inland;* like Petitioner Kern, they opposed the Trustees' Plan in the District Court proceedings leading to its confirmation in June, 1958, appealed to the Court of Appeals from the confirmation order, had their appeal dismissed in January, 1959 and unsuccessfully sought certiorari in this Court to review that decision.** Following denial of that petition for certiorari, the cases returned to the District Court. The Trustees then filed their petition for an order to aid consummation of their confirmed Plan and Petitioners in No. 809 tendered their new plan proposals. In the proceedings and appeals which followed (the subject of both the Kern and Vanston Petitions), Vanston Petitioners participated only to the limited extent stated below.

2. The Vanston Petitioners were not a sponsor of the proposals to "alter" the confirmed Trustees' Plan which Petitioners in No. 809 filed in the District Court. Counsel for them entered an appearance in the District Court, but advised the judge that "I don't care to be heard, if Your Honor please", and the Vanston Petitioners did not file any document in the District Court, either by way of opposition

*No. 325, October Term, 1957, denied 355 U. S. 837.
**No 765, October Term, 1958, denied 359 U. S. 979.

to the Trustees' petition for an order to consummate their Plan or in support of the Kern proposals.

3. The Vanston Petitioners did not appeal to the Court of Appeals from the District Court's order of which their Petition complains, which rejected the Kern proposals and directed consummation of the Trustees' Plan. They did not participate in the proceedings before the District Court or the Court of Appeals in which Petitioners in No. 809 sought a stay of the District Court's order pending decision of their appeal to the Court of Appeals. The Vanston Petitioners did not participate (or seek to participate) in the argument before the Court of Appeals on the appeal by Petitioners in No. 809. They did file a (5 page) Brief in the Court of Appeals as appellee, supporting the appeal by Petitioners in No. 809.

4. The Court of Appeals affirmed the District Court's order on January 27, 1960. Petitioners did not apply for rehearing of that decision. *Petitioners did not apply for a stay of mandate pending application to this Court for certiorari, nor did they respond to the motion for a stay of mandate which Petitioners in No. 809 filed in the Court of Appeals on February 12, 1960.* On February 23, 1960, the Court of Appeals stayed its mandate *in the case of Petitioners in No. 809.* The statement in the Vanston Petition that "the Court of Appeals stayed its mandate pending application for certiorari" simply is not true *as to them.* A stay has not been granted pending filing and disposition of *their* petition for certiorari.*

We respectfully refer the Court to the Counterstatement of the Case in our Brief in Opposition to the Petition in

*Had a stay been sought by Vanston Petitioners and granted on the same terms as the stay granted Petitioners in No. 809, it would have expired by its own terms more than four weeks before the Vanston Committee filed its petition for certiorari.

No. 809 (pp. 3-10) for a further statement of the facts and prior proceedings which bear on the questions presented by the Vanston Petition.

ARGUMENT

I.

NO IMPORTANT QUESTION OF FEDERAL LAW IS PRESENTED BY THE DECISION OF THE COURT OF APPEALS, REAFFIRMING ITS 1957 AND 1959 DECISIONS, THAT UNSECURED CREDITORS OF THE DEBTOR KENTUCKY ARE NOT ENTITLED TO POST-BANKRUPTCY INTEREST FROM THE ASSETS OF THE DEBTOR INLAND.

Like the Petition in No. 809, the Vanston Petition* asserts that the decisions of the Court of Appeals, which made Kentucky Bondholders "quasi-creditors" of the Debtor Inland, gave them a substantive right to post-bankruptcy interest from the assets of Inland; and, like the Petition in No. 809, the Vanston Petition wholly ignores the fact that the Court of Appeals, on each of three separate occasions, has determined that the "quasi-creditor" claim which *it* created for Kentucky Bondholders does *not* include

*The Vanston Petition states that the Court has jurisdiction of it under 28 U. S. C. § 1254(1), which provides that a case in a United States Court of Appeals may be reviewed by writ of certiorari "upon the petition of any *party*". In view of the facts that the Vanston Petitioners (i) did not participate in the District Court proceedings leading to the order of which they complain, beyond noting an appearance and (ii) did not appeal to the Court of Appeals from the District Court's order, it seems to us to be open to question whether they may invoke the certiorari jurisdiction of this Court as a "party". However, since the points made in the Vanston Petition are so clearly without merit and we have no wish to delay disposition of the Vanston Petition by the raising of an issue extraneous to the decision of which it seeks review, we do not urge as a ground for denial of the Petition that the Court is without jurisdiction of it.

post-bankruptcy interest—or, phrased in the terms the Vanston Petition chooses to adopt—that Kentucky Bondholders do not have an equity of redemption in the assets of Inland for post-bankruptcy interest on their unsecured claims.

The reasons why no important question of federal law is presented by the refusals of the Court of Appeals to give creditors of Kentucky a "quasi-creditor" claim for post-bankruptcy interest are fully set forth in our Brief in Opposition to the Petition in No. 809, to which we respectfully refer the Court.* The only new argument presented by the Vanston Petition is the contention that (i) Chapter X was designed to eliminate "procedural barriers" to full participation in reorganization proceedings by "interested persons", (ii) to that end, it includes a definition of "stock" which gives holders of various evidences of beneficial ownership *of stock* the same right to be heard as the holders of legal title to stock enjoy, and (iii) holders of Kentucky Bonds, since they have been given equitable rights against Inland assets by the Court of Appeals, are within the broad definition of stockholders and entitled to exercise an equity of redemption with respect to the assets of Inland.

We think it perfectly plain that the premises of this argument ((i) and (ii) above) have no relation to its conclusion, and that the conclusion is simply the same old complaint, differently phrased, against the refusal of the Court of Appeals to give Kentucky creditors equitable rights against Inland assets for post-bankruptcy interest. Nobody questions the right of beneficial owners of equity interests to be treated, with regard to both procedural and substantive matters, as "stockholders", whatever the form of the instrument evidencing their interest. But it is not the form of the Kentucky Bonds that prevents recognition of their claim"

*Argument, Point I, pp. 11 *et seq.*

to post-bankruptcy interest from Inland assets. It is the fact that the Court of Appeals has determined that the equitable rights which it gave Kentucky Bondholders in the assets of Inland do *not* include an equitable right to post-bankruptcy interest. The statement in the Vanston Petition that Kentucky creditors "seem now the controlling stockholders of Inland" (p. 8) simply is a statement of the decision which the Vanston Petitioners wished the Court of Appeals to render and which that Court three times has refused to render.

II.

THE REFUSAL TO BEGIN NEW PROCEEDINGS ON THE KERN PROPOSALS WAS NOT AN ABUSE OF DISCRETION AND DOES NOT PRESENT ANY IMPORTANT QUESTION OF FEDERAL LAW.

The Vanston Petition limits its attack on the decision below, in so far as it relates to Chapter X standards and procedures, by arguing that the District Court had power to approve so much of the Kern proposals as provided that the Reorganized Company would assume liability for reorganization expenses. (Under the Trustees' Plan, the Trustee is to keep possession of enough money to pay estimated reorganization expenses, as well as other claims.) This argument misconceives entirely the arguments which Columbia and the Inland and Kentucky Trustee made to the Court of Appeals, and the view which the Court of Appeals expressed in its opinion, with regard to the changed method for payment of reorganization expenses (and other claims) which the Kern proposals provided.

Nobody argued to the District Court or the Court of Appeals, and neither Court said or implied, that Chapter X standards preclude assumption by a reorganized company of the expenses of the proceedings. The changes proposed by Kern *et al* in this regard are relevant for two reasons: *first*, because they effectively refute the contention that the Kern proposals provided funds sufficient to pay *all* claims and to provide for a "feasible" reorganization plan—only by using funds set aside under the Trustees' Plan for payment of claims would there have been *any* working capital for the Reorganized Company; and *second*, these changes were among the long list of changes in the Trustees' Plan, affecting *every* operative provision in it, which Kern *et al* proposed, and which led the Court of Appeals to say that "nothing appears to be left of the confirmed plan except the partial description of the reorganization and history of the debtor" (Vanston App., 4a). It is not necessarily true, as the Vanston Petition states, that no interested party would have been injured by these changes. The District Court and the Court of Appeals might properly have been concerned that persons who had rendered substantial services in the reorganization for many, many years would lose the advantages of an adequate and specific fund set aside for them under the Trustees' Plan and receive in return an unsecured claim against the Reorganized Company. But in any event, the matter of the appropriate method of providing for the payment of reorganization expenses was plainly within the discretion of the court administering the reorganization; and the Vanston Petition does not suggest any reason why the decision of the Courts below, even if it depended on the comparative advantages of the different methods for handling reorganization expenses, presents a question of importance which this Court should review.

CONCLUSION

The Petition for writ of certiorari (No. 883) should be denied.

Respectfully submitted,

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